

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MATT P. JACOBSEN,

Plaintiff,

v.

HSBC BANK USA, N.A., et al.,

Defendants.

Case No. 3:12-cv-00486-MMD-WGC

ORDER

(Plf.'s Renewed Motion for Temporary  
Restraining Order – dkt. no. 28)

**I. SUMMARY**

Before the Court is Plaintiff Matt P. Jacobsen's Renewed Verified Emergency Motion for Temporary Restraining Order (dkt. no. 28). Jacobsen filed the Motion on the eve of the scheduled sale date of his property that is the subject of this suit and after the Court denied his previous temporary restraining order ("TRO") request on November 30, 2012. (See dkt. no. 27.) Defendants HSBC Bank USA, N.A. and HSBC Mortgage Corporation (USA) (collectively "HSBC") filed their Response the same day. (Dkt. no. 28.) In this Motion, he argues that the Court erred by failing to address whether or not Defendant complied with Nevada state law's requirement that an affidavit of authority be recorded alongside any notice of default. As the Motion requests a reconsideration of the November 30, 2012, Order, the Court construes this second Emergency Motion as a Motion for Reconsideration.

**II. BACKGROUND**

The relevant details concerning this transaction are summarized in the Court's November 30, 2012, Order.

### 1      **III.      LEGAL STANDARD**

2            Although not mentioned in the Federal Rules of Civil Procedure, motions for  
 3      reconsideration may be brought under Rules 59(e) and 60(b). Under Rule 60(b), a court  
 4      may relieve a party from a final judgment, order or proceeding only in the following  
 5      circumstances: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
 6      discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been  
 7      satisfied; or (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*,  
 8      243 F.3d 549, 549 (9th Cir. 2000). See also *De Saracho v. Custom Food Mach., Inc.*,  
 9      206 F.3d 874, 880 (9th Cir. 2000) (noting that the district court's denial of a Rule 60(b)  
 10     motion is reviewed for an abuse of discretion).

11           A motion for reconsideration must set forth the following: (1) some valid reason  
 12     why the court should revisit its prior order; and (2) facts or law of a "strongly convincing  
 13     nature" in support of reversing the prior decision. *Frasure v. United States*, 256  
 14     F.Supp.2d 1180, 1183 (D. Nev. 2003). On the other hand, a motion for reconsideration  
 15     is properly denied when the movant fails to establish any reason justifying relief.  
 16     *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985) (holding that a district court  
 17     properly denied a motion for reconsideration in which the plaintiff presented no  
 18     arguments that were not already raised in his original motion)). Motions for  
 19     reconsideration are not "the proper vehicles for rehashing old arguments," *Resolution*  
 20     *Trust Corp. v. Holmes*, 846 F. Supp. 1310, 1316 (S.D. Tex. 1994) (footnotes omitted),  
 21     and are not "intended to give an unhappy litigant one additional chance to sway the  
 22     judge." *Durkin v. Taylor*, 444 F. Supp. 879, 889 (E.D. Va. 1977).

### 23      **IV.      DISCUSSION**

24           Jacobsen's Motion is without merit, as he has failed to demonstrate a valid reason  
 25     as to why the Court should revisit its prior order. He argues that the impending  
 26     foreclosure sale must be enjoined because HSBC failed to file an affidavit of authority as  
 27     required by NRS § 107.080(2)(c). While his interpretation of the *current* law's  
 28     requirements is correct, he fails to appreciate that this requirement arose only after

1 October 1, 2011. Under the current rule, effective from October 1, 2011, onwards, a  
2 foreclosing entity must record a notice of breach and election to sell which includes a  
3 notarized affidavit of authority to exercise the power of sale.

4 However, the prior rule, effective up until September 30, 2011, did not so require.  
5 The Notice of Default issued by Housekey Financial Corporation was executed and  
6 recorded on July 27, 2010. (Dkt. no. 23-F.) At the time of its execution, the governing  
7 version of NRS § 107.080 did not require the recording of an affidavit of authority  
8 alongside a notice of default and election to sell. Accordingly, Housekey and HSBC  
9 complied with the statutory provisions of Nevada's foreclosure law, and Jacobsen cannot  
10 meet his burden to demonstrate mistake in the Court's November 30, 2012 Order.

11 **V. CONCLUSION**

12 IT IS HEREBY ORDERED that Plaintiff's Emergency Motion for Temporary  
13 Restraining Order (dkt. no. 28) is DENIED.

14 DATED THIS 5<sup>th</sup> day of December 2012.

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18 MIRANDA M. DU  
19 UNITED STATES DISTRICT JUDGE  
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